

Employment and Training Administration, Labor

§ 655.185

U.S. worker availability and adverse effect criteria of this subpart.

(b) *Notification of required special procedures.* The OFLC Administrator will notify the employer (or agent or attorney) in writing of the special procedures that will be required in the coming year. The notification will state the reasons for the imposition of the requirements, state that the employer's agreement to accept the conditions will constitute inclusion of them as bona fide conditions and terms of a temporary agricultural labor certification, and will offer the employer an opportunity to request an administrative review or a de novo hearing before an ALJ. If an administrative review or de novo hearing is requested, the procedures prescribed in § 655.171 will apply.

(c) *Failure to comply with special procedures.* If the OFLC Administrator determines that the employer has failed to comply with special procedures required pursuant to paragraph (a) of this section, the OFLC Administrator will send a written notice to the employer, stating that the employer's otherwise affirmative H-2A certification determination will be reduced by 25 percent of the total number of H-2A workers requested (which cannot be more than those requested in the previous year) for a period of 1 year. Notice of such a reduction in the number of workers requested will be conveyed to the employer by the OFLC Administrator in the OFLC Administrator's written certification determination. The notice will offer the employer an opportunity to request administrative review or a de novo hearing before an ALJ. If administrative review or a de novo hearing is requested, the procedures prescribed in § 655.171 will apply, provided that if the ALJ affirms the OFLC Administrator's determination that the employer has failed to comply with special procedures required by paragraph (a) of this section, the reduction in the number of workers requested will be 25 percent of the total number of H-2A workers requested (which cannot be more than those requested in the previous year) for a period of 1 year.

§ 655.184 Applications involving fraud or willful misrepresentation.

(a) *Referral for investigation.* If the CO discovers possible fraud or willful misrepresentation involving an *Application for Temporary Employment Certification*, the CO may refer the matter to the DHS and the Department's Office of the Inspector General for investigation.

(b) *Sanctions.* If the WHD, a court or the DHS determines that there was fraud or willful misrepresentation involving an *Application for Temporary Employment Certification* and certification has been granted, a finding under this paragraph will be cause to revoke the certification. The finding of fraud or willful misrepresentation may also constitute a debarable violation under § 655.182.

§ 655.185 Job service complaint system; enforcement of work contracts.

(a) *Filing with DOL.* Complaints arising under this subpart must be filed through the Job Service Complaint System, as described in 20 CFR part 658, subpart E. Complaints involving allegations of fraud or misrepresentation must be referred by the SWA to the CO for appropriate handling and resolution. Complaints that involve worker contracts must be referred by the SWA to the WHD for appropriate handling and resolution, as described in 29 CFR part 501. As part of this process, the WHD may report the results of its investigation to the OFLC Administrator for consideration of employer penalties or such other action as may be appropriate.

(b) *Filing with the Department of Justice.* Complaints alleging that an employer discouraged an eligible U.S. worker from applying, failed to hire, discharged, or otherwise discriminated against an eligible U.S. worker, or discovered violations involving the same, will be referred to the U.S. Department of Justice, Civil Rights Division, Office of Special Counsel for Unfair Immigration Related Employment Practices (OSC), in addition to any activity, investigation, and/or enforcement action taken by ETA or a SWA. Likewise, if OSC becomes aware of a violation of the regulations in this subpart, it may